HOGAN & HARTSON

L L.P

ORIGINAL

ARI Q FITZGERALD
PARTNER
(202) 637-5423
AQFITZGERALD@HHLAW.COM

COLUMBIA SQUARE
555 THIRTEENTH STREET, NW
WASHINGTON, DC 20004-1109
TEL (202) 637-5600
FAX (202) 637-5910
WWW HHLAW COM

October 16, 2003

RECEIVED

OCT 16 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

By Hand Delivery

Ms Marlene H Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-B204
Washington, D.C 20554

Re: Year 2000 Biennial Regulatory Review
Amendment of Part 22 of the Commission's Rules
WT Docket No. 01-108
***Ex Parte* Communication**

Dear Ms. Dortch·

Pursuant to Section 1.1206(b) of the Commission's rules, I am writing on behalf of American Honda Motor Co., Inc., ATX Technologies, Inc., Deere & Company, General Motors Corporation, Mercedes-Benz, USA, LLC, OnStar Corporation, Toyota Motor North America, Inc and Volkswagen of America, companies that provide important telematics services using Advanced Mobile Phone Service ("AMPS"), to inform you of a meeting held with staff of the Commission's Wireless Bureau on October 14, 2003, regarding issues raised in the above-referenced proceeding.

The meeting was held to discuss the need for the Commission to reject a petition for reconsideration of its biennial review decision [1] to provide for a 5-year sunset of the analog cellular requirement contained in 47 C.F.R. §§ 22.901(d) and 22 933 Attached to this letter is a summary of the presentation made by the companies listed above.

---

[1] Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission's Rules to modify or Eliminate Outdated Rules Affecting the Cellular Radio Telefone service and other Commercial mobile radio Services, *Report and Order*, 17 FCC Rcd 18401 (2002)

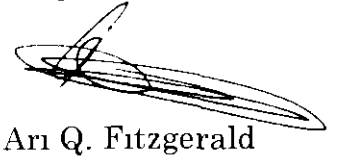
0+4

Those participating in the meeting on behalf of the companies include Bill Ball, OnStar; Bill Behan, John Deere; Patrick Calpin, American Honda Motor Co , Inc.; Bill Carnell, Latham & Watkins and Counsel to Toyota Motor North America, Inc.; Robert Chiappetta, Toyota Motor North America, Inc.; David Geanacopoulos, Volkswagen of America, Inc.; John Logan, Counsel to ATX Technologies, Inc., Christopher Leahy, Volkswagen of America, Inc.; Daniel Selke, Mercedes-Benz, USA, LLC; Sascha Simon, Mercedes-Benz USA, LLC; Geoffrey Smith, Mercedes-Benz USA, LLC and the undersigned, Counsel to Mercedes-Benz USA, LLC.

Commission staff who participated in the meeting include Uzoma Onyeije, Linda Chang, B.C. Jackson, Jr. and James Brown, all of the Commission's Wireless Bureau.

An original and one copy of this letter are submitted for inclusion in the proceeding record.

Respectfully submitted,



Ari Q. Fitzgerald

Enclosure
cc (w/enc.): Mr Uzoma Onyeije
Ms Linda Chang
Mr. B C. Jackson, Jr.
Mr. James Brown

AMERICAN HONDA MOTOR CO., INC.
ATX TECHNOLOGIES, INC.
DEERE & COMPANY
GENERAL MOTORS CORPORATION
MERCEDES-BENZ, USA, LLC
ONSTAR CORPORATION
TOYOTA MOTOR NORTH AMERICA
VOLKSWAGEN OF AMERICA

ANALOG CELLULAR PROCEEDING,
WT DOCKET NO. 01-108

- The automobile and telematics industries support the Commission's decision to establish a 5-year transition for the elimination of the analog cellular requirement.
- A shorter transition period would wreak havoc with respect to a large segment of the population (the deaf and hard-of-hearing, emergency-only callers, telematics users, rural mobile phone users, roamers, etc.) that relies on the analog cellular network.
- The Commission's decision to establish a 5-year transition period is supported overwhelmingly by the proceeding record.
    - The record demonstrates that a 5-year transition is needed to protect the deaf and hard-of-hearing, as most digital wireless phones are not compatible with hearing aids or cochlear implants, and the Commission's own plan for hearing aid compatibility envisions a gradual phase-in.
    - The record demonstrates that a 5-year transition is needed to protect millions of emergency-only callers (many of whom are elderly), as there is no guarantee that all of these callers would be able to replace their existing analog phones with digital phones capable of dialing 911 if a shorter transition period applied.
    - The record demonstrates that a 5-year transition is needed to make possible the development of multi-mode devices that facilitate nation-wide roaming and the continued use of telematics services. The geographic scope of digital wireless networks must be expanded significantly before digital services can become ubiquitous enough to support nation-wide roaming and telematics.

- The Commission struck the proper balance between the needs of the hearing impaired and wireless carriers when it established the 5-year transition period. This balance is reflected not only in the Commission's analog cellular proceeding decision, but also in the Commission's decision in the hearing aid compatibility proceeding. A change in the transition period at this point would impact negatively and directly the interests of those whom the Commission sought to protect in its hearing aid compatibility decision. Those who advocate shortening the transition period make no attempt to address the impact such a decision would have on the hearing impaired.

- A transition period of less than 5 years would be devastating for consumers of telematics services.
  - There are currently over 2,500,000 vehicles on the road equipped with analog cellular-based telematics.
  - The life spans of these vehicles average 8-9 years, and can actually be more than double that period.
  - Today, telematics services are receiving and requesting emergency assistance for more than 900 airbag deployments, and more than 6,000 other emergency situations, per month.
  - Valuable automobile-based safety services (*i.e.*, "mayday," automatic crash notification, stolen vehicle location, remote diagnostics, remote door unlock and roadside assistance, ect.) would be compromised (in some cases increasing emergency response times) if the analog cellular network were not available.
  - Given the current installed base of analog cellular-based telematics, a shorter transition period could result in hundreds of millions of dollars of stranded investment.
- A reduction in the transition period could cause the elimination of telematics services.
  - The analog cellular network is, by far, the most ubiquitous wireless network operating in the U.S., covering about 90 percent of the country's land mass. By comparison, CDMA, TDMA/GSM and iDEN cover 51.3, 53.5 and 35.9 percent respectively.
  - Virtually all of the telematics units currently in operation today rely on analog cellular service.

- These telematics units are imbedded in durable vehicles and integrated into the vehicles' electrical and physical environments, making retrofits impractical.

- Although development of a digital telematics solution is underway, a significant expansion of digital coverage, and extensive stand-alone and in-vehicle testing will be necessary before automobile companies will be able to install digital telematics devices in significant numbers.

- A major challenge for the automobile and telematics industries is to develop a digital telematics solution that is capable reliably of transmitting voice and data simultaneously.

- Once the automobile industry is confident that a digital solution will be able reliably to transmit voice and data simultaneously, it will still take a significant amount of time to roll-out digital telematics solutions across all of the vehicle platforms affected.

- Given the long design (typically 3 years), product (typically 5 years) and vehicle life (typically 8-9 years and sometimes longer) cycles of automobiles, and the time it will take to install, test and validate new digital telematics equipment across multiple vehicle platforms, a transition period of less than 5 years would not provide a sufficient amount of time for an orderly transition to digital-based services.

- The Commission made a discrete and focused decision in September 2002 when it established the 5-year transition period. The automobile and telematics industries have relied upon the existence of a 5-year transition period in making their investments in a digital telematics solution. In view of such reliance, it would be inappropriate for the Commission to shorten the transition period at this time. The reality is that a shortened transition period would result in the elimination of telematics service.

- The Commission's decision establishing a 5-year transition period was consistent with Section 11 of the Communications Act.

  - The D. C. Circuit's decision in *Fox Television Stations, Inc. v. Federal Communications Commission*, 280 F.2d 1027 (D.C. Cir. 2002), establishes that in conducting a biennial review the Commission may examine factors (such as service to the deaf and hard-of-hearing and emergency-only callers) in addition to the original purpose of a rule.

  - The Commission's determination that the analog cellular requirement must be maintained for at least 5 more years in order to ensure an adequate level of wireless service to the hearing impaired is consistent

with and furthers the Commission's original purpose for promulgating its analog cellular rule – *i.e.*, ensuring "nation-wide compatibility and a level of quality comparable to the landline network." 1/

1/ Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems, *Notice of Inquiry and Notice of Proposed Rulemaking*, 78 FCC 2d 974 ¶ 54 (1980).